

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

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5 - - - - - X  
6 UNITED STATES OF AMERICA ) 15CR142  
7 )  
8 vs.

9 GREGORY WILLSON, ET AL. ) Buffalo, New York  
10 Defendant. ) September 21, 2016  
11 1:15 p.m.  
12 - - - - - X

13 **Appeal of Magistrate Judge's Decision and Order**

14  
15 TRANSCRIPT OF PROCEEDINGS  
16 BEFORE THE HONORABLE ELIZABETH A. WOLFORD  
17 UNITED STATES DISTRICT JUDGE

18 WILLIAM J. HOCHUL, JR., ESQ.  
19 United States Attorney  
20 BY:JOSEPH TRIPI, ESQ.  
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2 **CONTINUATION OF APPEARANCES**

3  
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5 Harrington & Mahoney  
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7 Buffalo, New York 14202

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9  
10 **P R O C E E D I N G S**

11 \* \* \*

12 THE CLERK: Criminal action, 2015-142, United  
13 States versus Gregory Willson, et al, oral argument. Counsel,  
14 please state your name and the party you represent for the  
record.

15 MR. TRIPI: Joseph Tripi for the United States and  
16 Brendan Cullinane for the United States.

17 THE COURT: Good afternoon.

18 MS. DUTTA: Reena Dutta for defendant, Tom  
19 Scanlon.

20 THE COURT: How do you pronounce the last name?

21 MR. DUTTA: Dutta.

22 THE COURT: Good afternoon, Ms. Dutta. Mr.  
23 Mahoney is here. And we have Mr. McIndoo?

24 DEFENDANT MCINDOO: Yes.

25 THE COURT: Mr. McIndoo, good afternoon.

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2 And is Mr. Scanlon here?

3 MS. DUTTA: He is in the courtroom.

4 THE COURT: Good afternoon, sir.

5 MR. COVERT: Barry Covert on behalf of Andre  
6 Jenkins.

7 THE COURT: And is Mr. Jenkins here?

8 MR. COVERT: He is here, in the white shirt.

9 THE COURT: Good morning. It looks as though  
10 there are a number of defense counsel who are not here, even  
11 though defendants are here.

12 MR. COVERT: That is correct. I am standing in  
13 for the remaining defense counsel, if you want to go through  
14 them.

15 THE COURT: I got a list. I want to make sure I  
16 got all of the folks straight. Is Mr. Willson here? All  
17 right. Good afternoon.

18 DEFENDANT WILLSON: Do you want me to stand?

19 THE COURT: No, that's fine. I want to be able to  
20 eyeball you, know who you are.

21 MR. COVERT: I'm standing in for Mr. Agro, your  
22 Honor.

23 THE COURT: And is Mr. Pirk here?

24 DEFENDANT PIRK: Here.

25 THE COURT: Good afternoon, sir.

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2                          MR. COVERT: I am standing in for Mr. Easton and  
3                          Ms. Meyers Buth, your Honor.

4                          THE COURT: Mr. Enix, I don't think --

5                          MR. COVERT: I don't think he is here, your Honor.  
6                          I've been asked by Mr. Connors to stand in for him, your Honor.

7                          THE COURT: Mr. Caruso.

8                          MR. COVERT: I am standing in for Mr. Pieri. Mr.  
9                          Caruso is here, front row, second person.

10                        THE COURT: Good afternoon. Mr. Dekay.

11                        DEFENDANT DEKAY: Right here.

12                        MR. COVERT: I'm standing in for Emily Trott.

13                        THE COURT: Mr. Williams, Jason Williams, he  
14                        is out of custody.

15                        MR. COVERT: He is out of custody and I'm standing  
16                        in for Joseph Catalano.

17                        THE COURT: And he is not here?

18                        MR. COVERT: He is not present, your Honor.

19                        THE COURT: Mr. Osborne.

20                        MR. COVERT: And I have been asked by Andrew  
21                        Brautigam to stand in for him, your Honor.

22                        THE COURT: Mr. -- I'm going to mispronounce it --  
23                        Olejniczak. Good afternoon. How do you pronounce that?

24                        DEFENDANT OLEJNICZAK: Olejniczak.

25                        MR. COVERT: I will stand in for Mr. Stachowski.

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2                          THE COURT: Jack Wood.

3                          MR. COVERT: I will stand in for Mr. Molloy.

4                          THE COURT: Glen -- I'm not going to pronounce  
5                          that -- Mr. Okay represents him.

6                          MR. COVERT: I've been asked by Mr. Okay to stand  
7                          in for him.

8                          THE COURT: Mr. Mahoney and Mr. McIndoo is there.  
9                          Anybody we didn't call?

10                        Let me state on the record, I know the defendants  
11                        who are in custody are in restraints right now. It's my  
12                        practice, actually, not to require that. I was asked by the  
13                        Marshal Service and told by them, frankly, we wouldn't be able  
14                        to go forward with the proceeding because of the number of  
15                        defendants who are in restraints. For purposes of today, we're  
16                        going to go forward with the defendants in restraints and we'll  
17                        see how we handle that going forward.

18                        So, in any event, the matter is on for the appeal  
19                        that was filed by Mr. Scanlon's attorneys, but on behalf of all  
20                        of the defendants who are here with respect to Judge Roemer's  
21                        decision to deny the request for a scheduling order with  
22                        respect to Brady material. So, Ms. Dutta, it's your appeal, so  
23                        why don't you go forward?

24                        MS. DUTTA: Thank you, your Honor. We're not  
25                        asking that you reweigh facts. Our position is that there are

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2                          multiple permissible views on how this could come out and we're  
3                          asking to you take a different one. There is no reason not to  
4                          issue a pretrial Brady in this case. There are number of  
5                          reasons, the most significant of which is this is a complex  
6                          case. This is a 72-page indictment and encompasses 46 counts,  
7                          16 defendants are charged, two of whom have since pled. The  
8                          indictment itself is as a result of a multi-jurisdictional  
9                          investigation involving the FBI in Buffalo, Tennessee and  
10                        Florida, involved ICE, Homeland Security, the Erie County  
11                        Sheriff's Department, the Buffalo Police Department, the New  
12                        York State Police Department, and I don't think I'm naming them  
13                        all, your Honor. And the nature of that investigation suggests  
14                        that there is going to be potential Brady and Giglio term in  
15                        the hands of, multiple law enforcement agencies and discrete  
16                        agencies. And the crime itself, your Honor, is a  
17                        multi-discretionary crime. There are allegations of acts that  
18                        took place in Pennsylvania, Florida, and Georgia and various  
19                        places in New York State, it's not going to be feasible for  
20                        counsel to get on a plane.

21                        THE COURT: Let me ask you a question. Because  
22                        this is an appeal from Judge Roemer's decision, so the standard  
23                        is that I would have to determine that his decision was clearly  
24                        erroneous or contrary to law. So the issue isn't so much maybe  
25                        whether or not I would have made a different decision to begin

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2               with. The issue is whether or not Judge Roemer exercised a  
3               discretion here to deny the order was contrary to law or  
4               clearly erroneous. And, I mean, how do you get over that  
5               hurdle?

6                          MS. DUTTA: Two things. The first being this is a  
7               complex case. And a magistrate judge didn't address the nature  
8               of the complexity in his decision denying the request. That is  
9               the first part. And the second is the distinction between  
10              Brady, Giglio and Jencks, the magistrate judge adopted the  
11              government's that Giglio.

12                        THE COURT: I've always called it Giglio, maybe  
13               it's wrong, so in any event go ahead.

14                        MS. DUTTA: Giglio material is Brady material,  
15               that is black letter law. And I think it is the case and I  
16               think the point that the government has tried to make is Giglio  
17               is to be supplied at the same time as Brady. This is simply not  
18               the case.

19                        THE COURT: Why isn't that the case? The cases  
20               I've read, Giglio material is required to be disclosed maybe  
21               earlier than after the witness testifies are where you have a  
22               witness who is the case for the government. The case rises and  
23               falls on one particular witness. And without knowing the scope  
24               of the impeachment material, the defense really isn't going to  
25               have an appropriate opportunity to prepare for trial, which,

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2                          obviously, Brady requires. I mean, why is this that type of a  
3                          case?

4                          MR. TRIPI: Well, that is Giglio material, your  
5                          Honor. As you point out, that is Brady material and the rule  
6                          is it has to be disclosed in sufficient time for its effective  
7                          use for the defense in terms of this case how complex and how  
8                          many people involved and where the material is and where  
9                          defense counsel would have to potentially go to investigate  
10                        that material to effectively use it, which is not going to be  
11                        effective right before a witness testifies.

12                        THE COURT: There is a little difference between  
13                        where we are right now, pretrial motions haven't been filed,  
14                        and having a witness testify.

15                        MR. TRIPI: Absolutely, your Honor. We're just  
16                        asking for a pretrial order sufficiently in advance of trial.  
17                        We prefer it before pretrial motions are due because there is  
18                        simply no reason not to. The government hasn't claimed, at  
19                        least in this motion, that there is an issue of witness  
20                        intimidation or identification that could harm any person.  
21                        There is no factual predicate of that in this motion. There is  
22                        really no reason to not to put in an order and significant  
23                        reasons to put in an order, again, given the fact that not  
24                        putting in one could avoid avoidable delays and wreak havoc on  
25                        this Court's schedule and there is in reason to do that.

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2 THE COURT: Okay. Anything else?

3 MR. TRIPI: No, your Honor.

4 THE COURT: Okay. I will let you respond after we  
5 hear from Mr. Tripi. Mr. Tripi?

6 MR. TRIPI: Does anybody else want to argue and  
7 I'll respond in kind to everyone?

8 THE COURT: I guess I assumed Ms. Dutta was  
9 arguing on behalf of all.

10 MR. COVERT: She is.

11 MR. MAHONEY: I have one thing to add.

12 THE COURT: I knew you would, Mr. Mahoney.

13 MR. MAHONEY: On the issue of the standard, it  
14 really, first of all, the government will maintain and always  
15 maintains that Brady did not create a right to discovery. That  
16 is contrary to what I think other people interpret Brady to  
17 mean. The reason I raise this point is that if you're thinking  
18 in terms of the standard as being a normal, quote, "discovery  
19 motion," that is brought based under referral of the magistrate  
20 judge from the Article 3 judge, then, yes, there is that  
21 standard in terms of how we review the magistrate judge's  
22 order. But I think this stands on a different footing. The  
23 defendants are seeking to implement their constitutional right,  
24 which obtains under Brady and the decisions after Brady and  
25 some decisions prior to Brady, and they are seeking to have

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2 judicial involvement to enforce that fundamental constitutional  
3 right. And so I will borrow from the government's argument  
4 it's not simply a discovery order, it's living up to  
5 constitutional obligations of the defendant. The defendants  
6 have the right to an Article 3 judge's determination on that  
7 actual issue as to the extent to which the Court is going to  
8 ensure that the government lives up to that obligation. And so  
9 I think this stands on different footing.

10 THE COURT: How does that argument, though, fit in  
11 with the fact is Brady is retrospective? So, in other words,  
12 if, in fact, there is a Brady violation, that it really doesn't  
13 become known until the time of trial and then the question is  
14 whether or not it was provided sufficient time to prepare for  
15 trial. And here we're looking at it, I mean what is being  
16 requested is something going forward, and to essentially cut  
17 off any potential constitutional violation.

18 MR. MAHONEY: Well, this is how the government has  
19 succeeded, I guess, by relentless and tireless repetition of  
20 the same thing for decades and has succeeded in distorting the  
21 role of Brady and to what the government will say is Brady is  
22 not a discovery case, it's a suppression case. It means there  
23 will be a remedy if they're caught.

24 THE COURT: I think that is what the case law  
25 says, too.

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2                          MR. MAHONEY: Certainly it's a remedy if they are  
3                          caught, but that is on the appellate level. It doesn't mean  
4                          that on the trial level the government can cross its fingers  
5                          and say, we're not going to give you anything and hopefully we  
6                          hope that later on it's not proven to be important at a later  
7                          time. The Court, by buying into the argument, is encouraging  
8                          the government to take chances by adopting that standard, and  
9                          by not saying to the government, well, what do you have. And  
10                        as a pre-condition to deciding discovery issues, the Court,  
11                        judges tend to say, well, the government knows its obligations  
12                        under Rule 16 and knows its obligations under Brady. The  
13                        problem with that, if you look at the U.S. Attorney Office's  
14                        manual it defines Brady as evidence which, on its own, would  
15                        require an acquittal. Now, that is a very narrow  
16                        interpretation of Brady. And yet that is what the official  
17                        statement by the Department of Justice. So you cannot, a judge  
18                        cannot possibly say, as the magistrate judge tends to, well,  
19                        the government understands its Brady obligation. I don't think  
20                        they do. They certainly don't articulate in the papers what  
21                        their obligation is. They make the pat phrase, "we understand  
22                        the Brady obligation." Well, if you look at the U.S.  
23                        Attorney's Manual, it states a phrase which I doubt you agree  
24                        with them or I doubt many judges do, but very few look at it.  
25                        My concern is Brady, unless we say that Brady doesn't impose

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2                          any argument on the obligation on the government to do anything  
3                          at trial, it's there in case they get caught, then why are we  
4                          talking about it? I think that most judges believe if it's a  
5                          due process right, it has. There is no such thing for a right  
6                          that only applies on appeal. There is no fundamental  
7                          constitutional right that only applies once there is a  
8                          conviction. It has to somehow apply at the trial level, it's  
9                          up to the trial judge to determine to ensure that right is  
10                        being followed. I don't think it's enough to say, well, the  
11                        government just sit down and say this is an appellate issue and  
12                        unless we get caught, you got nothing to say to us. I just  
13                        don't think that is the case. I think that totally dilutes the  
14                        responsibility of the judge to see to it that fundamental  
15                        constitutional rights that apply to trial are actually applied  
16                        at trial and not distorted into the idea that there is some  
17                        simple appellate remedy. There is no constitutional right that  
18                        I know of that only applies at the appellate level. It applies  
19                        at trial and it comes back to the Article 3 judge, not the  
20                        magistrate judge to make sure the rights are protected. The  
21                        fact the defense wanted to ask the magistrate judge, I don't  
22                        think, justifies any diluted review of the magistrate judge's  
23                        ability to grant that order.

24                        THE COURT: Thank you. Mr. Tripi.

25                        MR. TRIPI: Judge, in the defense papers, which

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2                                  they've all adopted, they concede that the standard is clearly  
3                                  erroneous or contrary to law. We're here on the appeal of  
4                                  Judge Roemer's decision denying pretrial disclosure Brady  
5                                  order. That is what we're here for. We agreed with this  
6                                  Court's suggestion and the defenses agreed with in their papers  
7                                  is it is a clearly erroneous and contrary to law. The first  
8                                  thing Ms. Dutta said there were multiple permissible views on  
9                                  how this could have come out. And we're asking you to take a  
10                                different view stated a different way. The defense cannot and  
11                                has not established that Judge Roemer's decision was clearly  
12                                erroneous and contrary to law. In fact, what has been done in  
13                                this case and what is being done is exactly what is  
14                                Constitutionally required. Disclosures of exculpatory Brady  
15                                materials have been and will continue to be made in the event  
16                                they are discovered, found through reasonable diligence.

17                                THE COURT: And in other words, the government's  
18                                position is that you're providing, quote, unquote, exculpatory  
19                                Brady material as soon as you're aware of it, but not  
20                                necessarily the impeachment type of Brady material.

21                                MR. TRIPI: Yes, Judge. And I would take it even  
22                                further. I'm saying I'm taking a broad view of it. For  
23                                example, by way of example, I brought a brief example of  
24                                something I provided to counsel for Mr. Scanlon. There was a  
25                                witness who provided a statement to the FBI essentially saying

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2                          that since the change in leadership at the clubhouse,  
3                          referencing the old man clubhouse, she has noticed drug use by  
4                          members and associates behind the clubhouse building. That is  
5                          not really exculpatory, that -- now that Scanlon is not the  
6                          boss of that drug house, they are noticing drugs outside of the  
7                          clubhouse, but in a broad view of it, I provide it. I guess  
8                          the argument or inference could be drawn, well, it wasn't like  
9                          that when he was the boss. Clearly that wouldn't stop drug use  
10                        or inside the clubhouse or things like that, but that is an  
11                        example of the type of thing that I have turned over and I  
12                        don't need a pretrial order to do that. I'm aware of my  
13                        obligations. If impeachment material doesn't rise to the level  
14                        of exculpatory information, things such as criminal histories,  
15                        plea agreements, things like that, all of that stuff gets  
16                        turned over in due course at the time of trial. In any trial,  
17                        I ever conducted in Federal Court, any trial I ever conducted  
18                        in state court and that is exactly what the law requires.  
19                        Things that rise to the level of exculpatory material or are  
20                        even close that stuff will be provided as I uncover it. And  
21                        I'd like to correct a couple of things that kind of dribbled  
22                        into the record at different points in time. Because the  
23                        defense has quoted me, as your Honor is aware, there was a  
24                        detention hearing regarding Mr. Enix before your Honor. And I  
25                        think in response to this Court's question and that situation,

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2         I said there was no Brady material. That was a response to as  
3         it related to Mr. Enix at that time. Then in front of Judge  
4         Roemer, I told him there was no Brady material. Actually that  
5         was an error in my part because months earlier on June 7th,  
6         when I provided voluntary discovery, I went back and looked at  
7         what I provided. I provided things like notes from witnesses  
8         and statements from the local police department when they did a  
9         canvass and said, oh, it might have been so and so, or you're  
10        such-and-such, short of rank speculation, you know, is that  
11        exculpatory, maybe, maybe not, but that kind of stuff was  
12        provided. When people said, oh, we speculate that the killer  
13        of the two individuals who were murdered in this case is Mr.  
14        Caruso, not -- they didn't say Mr. Jenkins, we now know Mr.  
15        Jenkins has been convicted, but we still provided those types  
16        of things where people speculated that it was Mr. Caruso who  
17        committed the murder, so those things were in the discovery  
18        already before any of the motions were filed, I continued to  
19        review 302s and grand jury materials, and I made grand jury  
20        disclosures. I'm well aware of my obligations, I plan to do  
21        that. The defendants can't say they haven't received  
22        disclosures because they know they have. We're going to comply  
23        with our obligations. We've done so to this point. We  
24        represented that to Judge Roemer and we represent it to this  
25        Court.

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2                          And as the Court pointed out, we're well in  
3                          advance of even a motion deadline much less trial. We'll  
4                          continue to review all of the information that comes to our  
5                          attention or is in possession of law enforcement, and we'll  
6                          make appropriate disclosures. But, on this appeal, Judge  
7                          Roemer didn't get anything wrong. It was not clearly erroneous  
8                          or contrary to law his decision. Essentially defense is asking  
9                          the Court to do what other courts have said is not required.  
10                        If you look at the Second Circuit decision in *Coppa*, if you  
11                        look at Judge Schroeder's decision that I quoted in *Hill*. His  
12                        quote in that Report and Recommendation was with respect to  
13                        impeachment material that does not rise to the level of Brady  
14                        material, such as Jencks statements. The prosecution is not  
15                        required to disclose and turn over such statements until after  
16                        the witness has completed his or her direct testimony.

17                        Well, we're going to turn over Jencks material  
18                        before that point in time at the appropriate time. We're going  
19                        to turn over impeachment material before a witness testifies.  
20                        We do that in every case. We don't wait until somebody  
21                        testifies and then spring it on them. And I'm sure this court  
22                        will give appropriate deadlines and times for defense counsel,  
23                        if something were to come up in the middle of trial, everyone's  
24                        best efforts are being complied with and something comes up,  
25                        I'm sure this Court would give time for defense to review the

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2 material they think they needed earlier. But that is not  
3 anyone's attention to hold out on things like that so that they  
4 can't prepare themselves for trial.

5 And impeachment material that is solely  
6 impeachment material is not the exculpatory material that we're  
7 talking about where disclosures are required right now. I  
8 submit anything that is marginally exculpatory, has been and  
9 will be turned over.

10 THE COURT: Even if it's impeachment material  
11 right now is your point?

12 MR. TRIPI: No, if it's strictly impeachment  
13 material, no.

14 THE COURT: So if it's impeachment material that  
15 is material to guilt, you turn it over now.

16 MR. TRIPI: Yes, correct. Sorry, I misunderstood  
17 you, will do.

18 THE COURT: And that is your policy, that is your  
19 practice and your office's policy.

20 MR. TRIPPI: Yes. If we have impeachment material  
21 that rises to the level of Brady, exculpatory because the case  
22 rises and falls on one person or things like that, of course, I  
23 turn that over. I submit that is not this case, but if that  
24 were to be the case, it would be turned over.

25 THE COURT: Anything else, Mr. Tripi?

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2                          MR. TRIPI: No, Judge, I rely on my papers.

3                          THE COURT: Ms. Dutta, any response?

4                          MR. TRIPI: Just a couple of things, your Honor.

5                          I apologize if I did not speak clearly, but I did not mean to  
6                          suggest that we view there are multiple permissive views of the  
7                          evidence. I thought I said there are not multiple permissive  
8                          views of the evidence. The only one is not to enter a Brady  
9                          order in this case.

10                        THE COURT: Do you have any case that provides for  
11                        an order requiring an order for Brady at this stage?

12                        MR. TRIPI: No, not prior to pretrial motions.  
13                        But there is nothing preventing the Court from issuing such an  
14                        order. And to the extent the Court should be, after pretrial  
15                        motions and closer to trial, we're fine with that. We're  
16                        trying to get an order that sets a date certain that says we  
17                        have Brady and Giglio so we don't cause delays to the parties  
18                        and defendants and to this Court.

19                        THE COURT: Anything else, Mr. Mahoney?

20                        MR. MAHONEY: On that last issue, first of all,  
21                        the northern district there are a standing order for Brady  
22                        material to be provided within 14 days.

23                        THE COURT: Fourteen days.

24                        MR. MAHONEY: No. Arraignment, I think that is  
25                        the time, northern district. This is a judicial counsel, a

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2                          report that was prepared I don't know if it was a group out of  
3                          the national judicial officer, but it was a report on Brady  
4                          practices around the country and it listed a number of  
5                          jurisdictions. I can send your Honor and all parties a  
6                          reference to that memorandum which listed different practices,  
7                          different districts with standing Brady orders right at the  
8                          very beginning of the case to sort of obviate all of this  
9                          question.

10                        THE COURT: Could you?

11                        MR. MAHONEY: I'll file a letter to the Court and  
12                        all counsel enclosing that.

13                        THE COURT: Thank you.

14                        MR. TRIPI: I would note if that pre dates *Coppa*  
15                        or *Coppa*, however you want to pronounce it, that would be  
16                        irrelevant.

17                        MR. MAHONEY: *Coppa* is a Second Circuit decision,  
18                        we're talking other districts.

19                        THE COURT: I'll take a look at it because I am  
20                        interested in it.

21                        MR. TRIPI: Judge, I forgot one thing. On two  
22                        issues of this case being a complex case, this case is no other  
23                        complex than any other racketeering which I've tried multiple  
24                        RICO cases in federal courts. There were no orders to this  
25                        effect in those cases, so, and everything worked out just fine

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2                          in terms of disclosures and everything like that. So this is  
3                          not out-of-the-box complex in that regard. In terms of witness  
4                          -- there was a reference as to witness harm and things of that  
5                          nature. I think, and I've argued this to Judge Roemer, the  
6                          indictment makes clear that there were concerns with respect to  
7                          witness intimidation, witness tampering, so I believe I  
8                          repeated, and in some of my filings before Judge Roemer as well  
9                          and we do have those concerns. Obviously if you provide all  
10                        impeachment information now, that is a tantamount to disclosure  
11                        of every government witness. We may not have any witnesses  
12                        that make it to a trial stage.

13                        THE COURT: Okay.

14                        MR. TRIPI: Thank you.

15                        THE COURT: Thank you, Mr. Tripi. I'm going  
16                        reserve decision on this. I'll get a decision out as soon as  
17                        possible. Let me raise another issue and that is, Mr. Tripi,  
18                        you had copied me in on a letter that you had sent setting  
19                        September 30th.

20                        MR. TRIPI: As a plea deadline.

21                        THE COURT: Is that still the deadline?

22                        MR. TRIPI: Yes.

23                        THE COURT: And the pretrial discovery deadline in  
24                        this case is sometime in early December.

25                        MR. TRIPI: I think they moved the motion deadline

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2                                  to December 7th.

3                                  THE COURT: What I want to do is set a date in  
4                                  January for us all to get together and pick a trial date. I  
5                                  know that pretrial matters are still going to be pending. At  
6                                  this point, we got too many defendants in custody, as far as  
7                                  I'm concerned, to wait until all pretrial motions have been  
8                                  resolved to pick a trial date because we're going to have a  
9                                  hard enough time, I think, as it is, working with everybody's  
10                                schedules to get a date. We'll set the date out far enough so  
11                                that it allows for any pretrial matters to be resolved but that  
12                                is what I would like to do.

13                                MR. TRIPI: I agree and appreciate that, Judge.

14                                THE COURT: So, what I'm going to do, and anybody  
15                                that is here right now can tell me if you're not available, but  
16                                my thought is we'll schedule this on January 12th, it's a  
17                                Thursday, 2 p.m. I'm going to issue an order indicating that  
18                                if defense counsel, for whatever reason, is not available on  
19                                that date, they need to have somebody here who knows their  
20                                schedule and can work with them to set a trial date.

21                                The other issue that I want everyone to be  
22                                prepared to discuss, in addition to the length of the trial, I  
23                                mean, that is primarily going to fall on your shoulders, Mr.  
24                                Tripi, in terms of letting us know that, is talk about Rule 18  
25                                as well that talks about where the trial is actually held.

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2         Obviously this is a Buffalo case, my seat is in Rochester.

3         Most of the attorneys are in Rochester. I'm assuming most of  
4         the witnesses are from this side of the district and I have not  
5         yet tried a Buffalo case in Rochester nor am I suggesting that  
6         I would insist on doing that here, but if we try this case  
7         here, I'm not going to be able to do it five days. I'm going  
8         to have to have one day where we're down and I'm back in  
9         Rochester. I want you to be -- everybody to be prepared to  
10        address that issue. But, also in estimating the trial length,  
11        you need to take that into account.

12                       MR. TRIPI: I'll begin looking at that now.

13                       THE COURT: All right. Anything else, Ms. Dutta?

14                       MS. DUTTA: No, your Honor.

15                       THE COURT: Mr. Mahoney or Mr. Covert.

16                       MR. COVERT: No, your Honor.

17                       THE COURT: Mr. Tripi?

18                       MR. TRIPI: No, your Honor. Thank you.

19                       THE COURT: Thank you very much, everyone.

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CERTIFICATE OF REPORTER

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I certify that the foregoing is a correct transcript of the  
record of proceedings in the above-entitled matter.

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S/ Karen J. Bush, RPR

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Official Court Reporter

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